IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 154 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVJI CHATUR VASAVA & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JOY MATHEW for Appellant(s) : 1 - 3.
MS HB POONANI PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/12/2007

ORAL JUDGMENT

1.0 This appeal arise out of the judgment and order dated 31st January, 1997 rendered by the learned Additional Sessions Judge, Bharuch in Sessions Case No.225 of 1996.

2.0 The appellant-original accused was charged with the offence punishable under Section 436 read with Section 34 of the Indian Penal Code.

3.0 It was the case of the prosecution that on 9th March, 1996 at about 8:30 at night the accused set the house of the complainant on fire causing loss of property to the tune of Rs.20,000/-.

4.0 Learned Additional Session Jude convicted all the accused and sentenced them to simple imprisonment for a period of five years and also directed to pay fine of Rs.200/- by each of them.

5.0 It was the case of the prosecution that when the complainant Lallubhai Muljibhai and his wife Nanduben were at home, the accused came and set the house on fire with the help of dry grass lying nearby. The defence sought to be raised

was that it was the case of accidental fire as both the complainant and his wife used to smoke 'bidi' inside their house and the accused were falsely involved. It was sought to be suggested that the complainant was working for one Shantilal Babubhai Vasava and Shantilal had some rivalry with the accused No.1 and on account of that the complainant had falsely implicated the accused at the instance of Shantilal.

6.0 To prove the charge, the prosecution examined six witnesses. P.W.-1-Lallubhai and P.W.-2-Nanduben were the only eye-witness.

7.0 Lallubhai Muljibhai-P.W.-1 in his deposition Exhibit-8 stated that on the date of incident when he was inside his house with his son, the accused set the roof of the house on fire upon which they came out of the house. Thereafter the accused runaway. The accused had used dry grass lying near the house to light the fire. Since, he and others started shouting,

Mangla, Koliya, Raman Devsinh etc. came there. When these people arrived at the place, the accused had already runaway.

7.1 In his cross-examination he admitted that there is no light in his house nor there is any light in the neighborhood. Therefore, the entire area remains under dark at night. He admitted that he and his wife smoke 'bidi' inside the house. He also admitted that they prepare food with firewood inside their house. He admitted that he works for Shantilal. He, however, did not know whether accused No.1 has some enmity with Shantilal.

8.0 P.W.-2-Naduben Lallubhai in her deposition Exhibit-10 stated that at about 8:00 clock on the night of the incident when her husband was having meal, the accused persons came near their house. They were drunk and were using foul language. When her husband asked them to stop using bad language, accused No.3 set the

house on fire. The others were standing there. They came out of the house and started shouting. Neighbors therefore came to the spot.

8.1 In her cross-examination she was confronted with the fact that before the police she had not stated that accused No.3 set the house on fire. She admitted that she, her husband and her daughter all three work for Shantilal in the mines. Significantly, in her cross-examination, she stated that initially they were inside the house, but upon seeing the flames of the fire they rushed outside.

9.0 P.W.-3-Savitaben Lallubhai is daughter of the complainant. In her deposition at Exhibit-11 she stated that she was actually not present on the spot when the incident took place and she had not seen the accused setting the house on fire.

10.0 P.W.-4-Mangabhai Bhimabhai in his deposition at Exhibit-12 stated that he had

rushed to the spot upon hearing the shouts. He saw the persons running away but he could not recognize them. He saw the house was on fire but did not ask as to who started the fire.

11.0 P.W.-5-Shantilal Babubhai Vasava who was examined at Exhibit-13 was the panch witness. He had witnessed the drawing of 'Panchnama' of the scene of offence.

11.1 In his cross-examination he admitted that there is a Civil Suit about the mines involving accused No.3. He also admitted that accused No.3 has filed a criminal case against him regarding setting one house on fire.

12.0 P.W.-6-Sunderbhai Ambalal Desai who was examined at Exhibit-15 was the Investigating Officer. He admitted that P.W.-2-Nanduben had not stated before him that accused No.3 had set the house on fire.

13.0 From the evidence and record it can be seen that there are only two eye-witnesses namely P.W.-1-Lallubhai Muljibhai and his wife P.W.-2-Nanduben. I find that there are material contradictions in the depositions of these witnesses. P.W.-1-Lallubhai stated that he was not aware as to why the accused set his house on fire. Contrary to that P.W.-2-Nanduben Lallubhai stated that the accused were drunk and were using foul language and upon being stopped from using such language by her husband-P.W.-1, set the house on fire.

14.0 P.W.-1-Lallubhai further stated that all the accused set the house on fire whereas P.W.-2-Nanduben specifically stated that accused No.3 set the house on fire and other two accused persons were standing nearby and they did not play any role. This statement of the P.W.-2-Nanduben is also a deviation from hear statement before the police.

15.0 P.W.-2-Nanduben also has made somewhat contradictory statements. After having stated in the examination-in-chief that the accused came near their house in drunken condition using foul language and set house on fire upon being stopped by her husband, this witness in the cross-examination stated that initially they were inside the house and came out of the house only after they saw the flames of fire.

16.0 Thus, there are many material contradictions in the depositions of two witnesses. If the incident had actually happened as narrated by P.W.2-Nanduben then P.W.-1-Lallubhai would not have stated before the Court that he does not know why the accused had set his house on fire.

17.0 Considering these aspects of the matter, the defence put forth seems probable. It is a fact on record that not only P.W.-1-Lallubhai but his wife and daughter also worked for P.W.-5-

Shantilal. P.W.-5-Shantilal in turn admitted that accused No.3 had filed criminal case against him for having set another house on fire. P.W.-1 and P.W.-2 both have admitted that they both smoke 'bidi' and often smoke inside their house. They also use firewood inside their house to prepare food. The possibility of an accident being passed off as an act of mischief at the instance of P.W.-5-Shantilal, therefore, cannot be totally ruled out.

18.0 Considering the above discussion, I am of the opinion that the conviction of the appellants needs to be set aside.

19.0 In the result, the appeal is allowed. Conviction is set aside. The appellants are acquitted. Bail bonds canceled. Fine, if any, paid shall be refunded.

(AKIL KURESHI,J.)

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